

TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

TEXT OF PROPOSED REGULATIONS

[Proposed new language is shown in bold (**bold**); text to be deleted is shown in ~~strikeout~~ (~~strikeout~~).]

32125. ~~Financial Reports.~~

~~(a) A petition to compel compliance with Government Code Section 3546.5 or 3587 or Public Utilities Code Section 99566.3 may be filed by any employee belonging to the organization. A petition to compel compliance with Government Code Section 3515.7(e) may be filed by any employee in the unit. Such petition shall be filed in the regional office and shall include the names, addresses and telephone numbers of the exclusive representative, the employer, and the petitioning party.~~

~~(b) The petition to compel compliance shall be filed not later than 12 months following the end of the exclusive representative's preceding fiscal year.~~

~~(c) Board Action.~~

~~(1) Upon the valid filing of a petition to compel compliance, the Board agent shall determine whether or not the exclusive representative has complied with the applicable Government Code section. In the event of a determination of noncompliance, the Board agent shall so notify the exclusive representative, requiring it to comply within 30 days of the notification.~~

~~(2) Any determination made by the Board agent pursuant to this section may be appealed to the Board itself in accordance with the provisions of Chapter 1, Subchapter 4, Article 2 or 3 of these regulations, as appropriate. The Board itself may issue a compliance order or take other appropriate action.~~

~~(d) The Board may require an exclusive representative to submit a copy of its most recent financial report.~~

Authority cited: Sections 3513(h), 3541.3(g) and 3563(f), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), ~~3524~~, 3541.3(n) and 3563(m), Government Code, and Sections 99561(m) and 99566.3, Public Utilities Code.

32130. Computation of Time.

(a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), the period of time begins to run the day after the act or occurrence referred to.

(b) ~~Except for filings required during a "window period" as defined in Section 33020, 40130, 51026, 61010, 71026, 81010 or 91010, whenever~~ **Whenever** the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include

the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.

(c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. **No extension of time applies in the case of documents served in person, or by facsimile transmission as defined in Section 32090.**

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections ~~12, 12(a) and 1013(a), Code of Civil Procedure~~ **3509, 3513(h), 3541.3, 3544.7(b), 3563, 3577(b), 71639.1, and 71825, Government Code, and Sections 99561 and 99564.4(b), Public Utilities Code.**

32135. Filing.

(a) All documents shall be considered "filed" when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office **during a regular PERB business day** ~~before the close of business on the last date set for filing.~~

(b) All documents, except proof of support as described in sections 32700, 61020, 81020 and 91020, shall also be considered "filed" when received **during a regular PERB business day** by facsimile transmission at the appropriate PERB office ~~before the close of business on the last day for filing~~ together with a Facsimile Transmission Cover Sheet, **or when received by on-line filing as defined in Section 32613.**

(c) A party filing documents by facsimile transmission **or by on-line filing** must also place the original, together with the required proof of service and the required number of copies, in the U.S. mail for delivery to the appropriate PERB office. ~~As an alternative to the service requirements set forth in Section 32140, any document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding.~~

(d) A facsimile filing shall be accompanied by a Facsimile Transmission Cover Sheet which includes the following:

- (1) The name of the party serving or filing papers by fax and the name and telephone number of the agent transmitting the document by facsimile transmission;
- (2) The name or title of the document being transmitted and the number of pages;
- (3) The date and time of the transmission;
- (4) The PERB case number, if any.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

32140. Service.

(a) All documents referred to in these regulations requiring "service," ~~or required to be accompanied by "proof of service,"~~ except subpoenas, shall be considered "served" by the Board or a party when personally delivered, ~~or deposited in the first-class mail~~ **or with a delivery service properly addressed, or when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d).** All documents required to be served shall include a "proof of service" ~~affidavit or declaration~~ signed under penalty of perjury ~~which meets the requirements of Section 1013(a) of the Code of Civil Procedure or~~ which contains the following information: **(1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years and not a party to the case; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) used for service on the party(ies); and (8) the date of service.**

____ I declare that I am employed or reside in the County of _____, State of _____.
I am over the age of 18 years and not a party to the within entitled cause; my address is
_____. On _____, I served the _____ on the _____ by placing
a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the
U.S. Mail at _____ addressed as follows:

____ (Names of Parties Served)

____ I declare under penalty of perjury that the foregoing is true and correct, and that this
declaration was executed on _____ at _____.

(Type or print name) _____ (Signature)

(b) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code.

32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, shall decide or otherwise participate in any case or proceeding:

(1) In which he or she has a financial interest in the outcome.

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

(3) When, in the case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.

(4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

(b) Whenever such a Board agent shall have knowledge of any facts, which under the provisions of this rule disqualify him or her from presiding over any aspect of a hearing or investigation, it shall be his or her duty immediately to notify the General Counsel or the Chief Administrative Law Judge, as appropriate, setting forth all reasons for his or her belief.

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Notwithstanding his or her disqualification, a Board agent who is disqualified may request another Board agent who has been agreed upon by all parties to conduct the hearing or investigation.

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall then refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

(f) Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are filed with the Board or within ten days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed. The motion shall be supported by sworn affidavits stating the facts constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all parties to the case.

(g) Within ten days after the filing of a motion for recusal, the Board member alleged to be disqualified shall render a decision stating the reasons therefore. If the Board member is not on the panel assigned to hear the case, he or she shall so inform the parties and indicate that he or she does not intend to participate in the case. In the event that the Board member decides to participate, he or she shall render a decision on the motion for recusal before doing so.

(h) Any party aggrieved by a determination made pursuant to subsections (d) or (g) of this rule may include the matter of claimed disqualification in a writ of extraordinary relief filed pursuant to Government Code Section **3509.5**, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, **3509.5**, 3513, 3520, 3541.3, 3542, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, and Sections 99561 and 99562, Public Utilities Code.

32190. Motions.

(a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(b) ~~Except as provided in Section 32646, responses~~ **Responses** to motions shall be filed with the Board agent within fourteen days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required.

(c) During the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and ~~32646~~ **32360**.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code.

32325. Remedial Power of the Board.

The Board shall have the power to issue a decision and order in an unfair practice case directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of the applicable statute.

Authority cited: Sections 3509(a), 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, **3509.5**, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, Section 99561(f), Public Utilities Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

32350. Definition of Administrative Decision.

(a) An administrative decision is any determination made by a Board agent other than:

(1) a refusal to issue a complaint in an unfair practice case pursuant to Section 32630,

(2) a dismissal of an unfair practice charge, **or**

(3) ~~a determination of a public notice complaint, or~~

~~(4)~~ a decision which results from the conduct of a formal hearing or from an investigation which results in the submission of a stipulated record and a proposed decision written pursuant to Section 32215.

(b) An administrative decision shall contain a statement of the issues, fact, law and rationale used in reaching the determination.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(k), (n), 3563(j), (m), 71639.1 and 71825, Government Code, and Section 99561(j), (m), Public Utilities Code.

32400. Administrative Remedies.

A motion for reconsideration need not be filed to exhaust administrative remedies.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, **3509.5**, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code, and Section 99562, Public Utilities Code.

32450. Request.

(a) An original and six (6) copies of a request from a party that the Board seek injunctive relief shall be filed with the General Counsel at the headquarters office with a copy to the appropriate regional office as designated in sections 32075 and 32612 and shall include:

(1) The written request, accompanied by reasons stating why injunctive relief is appropriate;

(2) A copy of the charge or complaint; and

(3) Declarations, on personal knowledge, setting forth in detail all pertinent facts underlying the request for injunctive relief.

(b) Service and proof of service on the respondent, is required of all documents filed with the General Counsel. Under this section service and proof of service shall be conducted pursuant to section 32140 except that service by mail must be done by express mail or by another common carrier promising overnight delivery thereof. If the request is made during a work stoppage or lockout, personal service on the respondent of all documents filed with the General Counsel is required.

(c) Notice that such a request is being made shall be provided no less than 24 hours prior to the filing to the General Counsel and the party against whom the relief is sought. Such notice may be by telephone or in person, or by any other means reasonably calculated to provide notice.

(d) An affidavit of notice shall be filed with the request. Such affidavit shall indicate to whom, at what time, and in what manner the notice required by subparagraph (c) above was accomplished.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(j), (n), 3563(i), 71639.1 and 71825, Government Code, and Section 99561(i), Public Utilities Code.

32500. Review of Representation Case.

(a) Any party to a decision in a representation case by the Board itself, except for decisions rendered pursuant to Chapter 5, ~~Subchapter 4~~, Chapter 7 or Chapter 8 of these Regulations,

may file a request to seek judicial review within 20 days following the date of service of the decision. An original and five copies of the request shall be filed with the Board itself in the headquarters office and shall include statements setting forth those factors upon which the party asserts that the case is one of special importance. Service and proof of service of the request pursuant to Section 32140 are required.

(b) Any party shall have 10 days following the date of service of the request to file a response. An original and five copies of the response shall be filed with the Board itself in the headquarters office. Service and proof of service of the request pursuant to Section 32140 are required.

(c) The Board may join in a request for judicial review or may decline to join, at its discretion.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, **3509.5**, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code, and Section 99562, Public Utilities Code.

32602. Processing Violations.

(a) Alleged violations of the EERA, Ralph C. Dills Act, HEERA, MMBA, TEERA, Article 3 of the Trial Court Act, the Court Interpreter Act, and alleged violations of local rules adopted pursuant to the MMBA, Trial Court Act or Court Interpreter Act, shall be processed as unfair practice charges ~~except as otherwise provided in these regulations.~~

(b) **Except as provided in subsections (c), (d) and (e),** Such unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.

(c) **A charge alleging that an employer or an exclusive representative has failed to comply with Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569, may be filed by any affected member of the public.**

(d) **A charge alleging that an exclusive representative has failed to comply with Government Code section 3515.7(e), 3546.5, 3584(b), or 3587, or Public Utilities Code Section 99566.3 may only be filed by an affected employee.**

(e) **A charge alleging that an exclusive representative has failed to comply with Government Code Section 3502.5(f), 71632.5(f), or 71814(f) may only be filed by the employer or an affected employee.**

Authority cited: Sections 3509, 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, **3519**, **3519.5**, **3523**, ~~3524~~, **3541.3(n)**, 3541.5, **3543.5**, **3543.6**, **3546.5**, **3547**, **3547.5**, **3563(m)**, 3563.2, **3571**, **3571.1**, **3571.3**, **3584**, **3587**, **3595**, **71632.5**, 71636, 71636.3,

71637.1, 71639.1, **71814**, 71823 and 71825, Government Code, and Sections 99561(h), ~~and~~ 99561.2, **99563.7, 99563.8, 99566.3, and 99569**, Public Utilities Code.

32604. Employee Organization Unfair Practices under MMBA.

It shall be an unfair practice for an employee organization to do any of the following:

- (a) Cause or attempt to cause a public agency to engage in conduct prohibited by the MMBA or by any local rule adopted pursuant to Government Code section 3507.
- (b) Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.
- (c) Refuse or fail to meet and confer in good faith as required by Government Code section 3505 or by any local rule adopted pursuant to Government Code section 3507.
- (d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 3505 or 3505.2 or required by any local rule adopted pursuant to Government Code section 3507.
- (e) In any other way violate MMBA or any local rule adopted pursuant to Government Code section 3507.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502, 3502.1, **3502.5**, 3505, 3505.2, 3506, 3507 and 3509, Government Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

32605. Copies of Unfair Practice Charges Required to be Filed.

Any party filing an unfair practice charge or amended charge must file the original and one copy with the appropriate regional office.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7, 3523**, 3541.3(i), (n), 3541.5, **3546.5, 3547, 3547.5**, 3563(h), (m), 3563.2, **3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1**, 71639.1, **71814, 71823** and 71825, Government Code, and Sections 99561(h), ~~and~~ 99561.2, **99566.3, and 99569**, Public Utilities Code.

32607. Employee Organization Unfair Practices under Trial Court Act.

It shall be an unfair practice for an employee organization to do any of the following:

- (a) Cause or attempt to cause a trial court to engage in conduct prohibited by the Trial Court Act or by any local rule adopted pursuant to Government Code section 71636.

(b) Interfere with, intimidate, restrain, coerce or discriminate against trial court employees because of their exercise of rights guaranteed by Government Code section 71631 or by any local rule adopted pursuant to Government Code section 71636.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 71634.2 or by any local rule adopted pursuant to Government Code section 71636.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71634.4 or required by any local rule adopted pursuant to Government Code section 71636.

(e) In any other way violate the Trial Court Act or any local rule adopted pursuant to Government Code section 71636.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections **71632.5**, 71636, 71636.3, 71637.1, 71639.1 and 71639.3, Government Code.

32609. Employee Organization Unfair Practices under Court Interpreter Act.

It shall be an unfair practice for an employee organization to do any of the following:

(a) Cause or attempt to cause a trial court or regional committee to engage in conduct prohibited by the Court Interpreter Act or by any local rule adopted pursuant to Government Code section 71823.

(b) Interfere with, intimidate, restrain, coerce or discriminate against court interpreters because of their exercise of rights guaranteed by Government Code section 71813 or by any local rule adopted pursuant to Government Code section 71823.

(c) Refuse or fail to meet and confer in good faith as required by Government Code section 71818 or by any local rule adopted pursuant to Government Code section 71823.

(d) Fail to exercise good faith while participating in any impasse procedure mutually agreed to pursuant to Government Code section 71820 or required by any local rule adopted pursuant to Government Code section 71823.

(e) In any other way violate the Court Interpreter Act or any local rule adopted pursuant to Government Code section 71823.

Authority cited: Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections **71814**, 71823 and 71825, Government Code.

32613. On-Line Filing.

(a) "On-line filing" and "electronic filing" refer to utilization of the web-based electronic filing service provided by the Board as an alternative means to file an unfair practice charge pursuant to this Subchapter.

(b) Utilization of on-line filing requires access by the user to the following:

(1) Personal computer with a Windows or Mac operating system;

(2) Internet web browser;

(3) Internet connection; and

(4) Digital copies of any attachments that are to be submitted with the charge.

(c) Utilization of on-line filing will require the user to provide an e-mail address, establish a user password, and agree to the terms of the following Disclaimer Statement found on the PERB website:

This application uses Javascript which will not work with some Ad Blocking Software. We suggest that you either turn off your Ad Blocking Software, or add our site URL (www.perb.ca.gov) to the trusted sites on your Ad Blocking Software. PERB is not responsible for difficulties encountered between your internet provider and PERB's network. An unfair practice charge (UPC) is considered "filed" when actually received before the close of business (5 p.m.) on a regular PERB business day. (PERB Regulation 32135.) The date and time a UPC is deemed filed will be determined by the date/time stamp applied by our server which points to Santa Cruz, CA: Scrutz-net, inc. 165.227.1.1: ns.scrutz.net Service area: Western U.S. If, after submitting your UPC, you do not receive an e-mail response containing a confirmation your charge has been successfully filed within a few minutes, there was a problem with your submission and your claim will not be considered filed. Using the PERB on-line filing application does not relieve the user of the responsibility for filing the signed original plus one copy of the charge along with the original signed proof of service in the appropriate PERB office (PERB Regulations 32605 and 32615). A copy of the completed unfair practice charge and proof of service form must also be served on the party being charged (respondent) by someone other than the charging party. A proof of service form must be attached to each copy of the charge to prove that a copy of the charge has been served on the respondent. If you have uploaded your attachments at the time of electronically filing your UPC, you

DO NOT need to submit copies of the same attachments through the U.S. Mail to PERB. However, a copy of the charge and all attachments must be served on the responding party. Failure to provide the original signed UPC, signed Proof of Service and attachments (if necessary) to the appropriate PERB office within 5 business days from the date stamp provided by PERB's server in your confirmation e-mail will result in the UPC being dismissed except in cases where good cause is demonstrated.

(d) Upon successful submission of an unfair practice charge, including any attachments, and the proof of service, through utilization of on-line filing, PERB will provide confirmation of receipt via e-mail to the e-mail address provided by the user.

Authority cited: Sections 3509(a), 3513(h), 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1 and 71825, Government Code, and Sections 99561 and 99561.2, Public Utilities Code.

32615. Contents of Charge.

(a) A charge may be filed alleging that an unfair practice or practices have been committed. The charge shall be in writing, signed under penalty of perjury by the party or its agent with the declaration that the charge is true, and complete to the best of the charging party's knowledge and belief, and contain the following information:

(1) The name and address of the party alleged to have engaged in an unfair practice. If the party is the State of California, the name and address of the "appointing power" as defined in Government Code Section 18524, and of the Governor shall be set forth;

(2) The name, address, and telephone number of the charging party;

(3) The name, address, and telephone number of an authorized agent of the charging party to be contacted;

(4) The sections of the Government Code and/or, under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act, the applicable local rules, or the sections of the Public Utilities Code, alleged to have been violated;

(5) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice;

(6) A statement whether or not an agreement or memorandum of understanding exists between the parties, and the date and duration of such agreement or memorandum of understanding;

(7) A statement of the extent to which and the inclusive dates during which the parties have invoked any grievance machinery provided by an agreement, **or, where applicable, have invoked procedures provided by the employer for resolving public notice complaints;**

(8) A statement of the remedy sought by the charging party;

(b) A charge filed under MMBA, Article 3 of the Trial Court Act, or the Court Interpreter Act alleging a violation of local rules must also contain a copy of the applicable rule(s).

(c) Service and proof of service on the respondent pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, ~~and~~ 99563.8, **99566.3**, **and 99569**, Public Utilities Code.

32620. Processing of Case.

(a) When a charge is filed, it shall be assigned to a Board agent for processing.

(b) The powers and duties of such Board agent shall be to:

(1) Assist the charging party to state in proper form the information required by section 32615;

(2) Answer procedural questions of each party regarding the processing of the case;

(3) Facilitate communication and the exchange of information between the parties;

(4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.

(5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), **or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) is based upon conduct occurring more than six months prior to the filing of the charge.**

(6) Place the charge in abeyance if the dispute arises under MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act and is subject to final and binding arbitration pursuant to a collective bargaining agreement, and dismiss the charge at the conclusion of the arbitration process unless the charging party demonstrates that the settlement or arbitration award is

repugnant to the purposes of MMBA, HEERA, TEERA, Trial Court Act or Court Interpreter Act, as provided in section 32661.

(7) Issue a complaint pursuant to Section 32640.

(c) The respondent shall be apprised of the allegations, and may state its position on the charge during the course of the inquiries. Any written response must be signed under penalty of perjury by the party or its agent with the declaration that the response is true and complete to the best of the respondent's knowledge and belief. Service and proof of service pursuant to Section 32140 are required.

(d) Facts obtained from oral responses that reveal potential deficiencies in the allegations must be communicated to the charging party before dismissal of a charge under Section 32630. The Board agent shall advise the charging party in writing of the deficiencies in the charge in a warning letter, unless otherwise agreed by the Board agent and the charging party. The warning letter shall identify the facts obtained from any response which reveal a deficiency in the charge. Responses which are obtained after the warning letter and which support dismissal of the charge must be communicated to the charging party before the dismissal is issued under Section 32630. The dismissal must identify the deficiencies in the charging party's allegations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1 and 71825, Government Code; ~~and~~ Sections 99561(h), 99561.2, 99563.7, ~~and~~ 99563.8, **99566.3**, **and 99569**, Public Utilities Code; ~~and~~ Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608, **and Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board** (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234].

32621. Amendment of Charge.

Before the Board agent issues or refuses to issue a complaint, the charging party may file an amended charge. The amended charge must contain all allegations on which the charging party relies and must meet all of the requirements of Section 32615. The amended charge shall be processed pursuant to Section 32620.

Authority cited: Sections 3509, 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, **71636**, **71636.3**, **71637.1**, 71639.1, **71814**, **71823**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, ~~and~~ 99563.8, **99566.3**, **and 99569**, Public Utilities Code.

32625. Withdrawal of Charge.

Any request for withdrawal of the charge shall be in writing, signed by the charging party or its agent, and state whether the party desires the withdrawal to be with or without prejudice. Request for withdrawal of the charge before complaint has issued shall be granted. Repeated withdrawal and refiling of charges alleging substantially identical conduct may result in refusal to issue a complaint. If the complaint has issued, the Board agent shall determine whether the withdrawal shall be with or without prejudice. If, during hearing, the respondent objects to withdrawal, the hearing officer may refuse to allow it. Service and proof of service of the withdrawal pursuant to Section 32140 are required.

Authority cited: Sections 3509, 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, ~~and~~ 99563.8, **99566.3**, **and 99569**, Public Utilities Code.

32630. Dismissal/Refusal to Issue a Complaint.

If the Board agent concludes that the charge or the evidence is insufficient to establish a prima facie case, the Board agent shall refuse to issue complaint, in whole or in part. The refusal shall constitute a dismissal of the charge. The refusal, including a statement of the grounds for refusal, shall be in writing and shall be served on the charging party and respondent.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, ~~and~~ 99563.8, **99566.3**, **and 99569**, Public Utilities Code.

32635. Review of Dismissals.

(a) Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Service and proof of service of the appeal on the respondent pursuant to Section 32140 are required.

The Appeal shall:

- (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
- (2) Identify the page or part of the dismissal to which each appeal is taken;
- (3) State the grounds for each issue stated.

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

(c) If the charging party files a timely appeal of the dismissal, any other party may file a statement in opposition to the appeal within 20 days following the date of service of the appeal. The original opposition and five (5) copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the filing party. Service and proof of service of the statement pursuant to Section 32140 are required.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(i)**, **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(h)**, **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32640. Issuance of Complaint.

(a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. The complaint shall contain a statement of the specific facts upon which Board jurisdiction is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair practice. The complaint shall include, when known, when and where the conduct alleged to constitute an unfair practice occurred or is occurring, and the name(s) of the person(s) who allegedly committed the acts in question. The Board may disregard any error or defect in the complaint that does not substantially affect the rights of the parties.

(b) The Board shall serve the complaint on the charging party and respondent.

(c) The decision of a Board agent to issue a complaint is not appealable to the Board itself except in accordance with Section 32200.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32644. Answer.

(a) The respondent shall file with the Board an answer to the complaint within 20 days or at a time set by the Board agent following the date of service of the complaint. Service and proof of service of the answer pursuant to Section 32140 are required. If a formal hearing is set less than 20 days after the complaint is served, the answer shall be filed no later than the date of hearing stated in the notice of hearing or as otherwise directed by the Board agent. Amended

complaints served after the answer is filed shall be deemed denied, except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

(b) The answer shall be in writing, signed by the party or its agent and contain the following information:

- (1) The case number appearing on the complaint;
 - (2) The name of the charging party;
 - (3) The name, address, telephone number and any affiliation of the respondent;
 - (4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;
 - (5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;
 - (6) A statement of any affirmative defense;
 - (7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.
- (c) If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(i), (n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(h), (m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32646. ~~_____~~ Defenses to Complaint.

~~If the respondent believes that issuance of the complaint is inappropriate either because the dispute is subject to final and binding arbitration, the charge is untimely, or a complaint may not be issued in light of Government Code Section 71639.1(c) or 71825(c), the respondent may assert such a defense in its answer and may move to dismiss the complaint, specifying fully the legal and factual reasons for its motion. The motion and all accompanying documents shall be served on the charging party. The charging party may respond to the respondent's motion~~

~~within 10 days after service or within a lesser period of time set by the Board agent. The Board agent shall inquire into the issues raised by the motion, and shall dismiss the complaint and charge if appropriate. If the Board agent sustains the motion, the dismissal may be appealed to the Board itself in accordance with Section 32635. If the Board agent denies the motion, the denial is appealable only as provided in section 32200.~~

Authority cited: Sections 3509, 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1, 3571.3, 71639.1 and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7 and 99563.8, Public Utilities Code.

32647. Amendment of Complaint Before Hearing.

After issuance of a complaint, the charging party may move to amend the complaint by filing with the Board agent:

- (a) a request to amend the complaint, and
- (b) an amended charge meeting the requirements of Section 32615.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(i), (n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(h), (m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32648. Amendment of Complaint During Hearing.

During hearing, the charging party may move to amend the complaint by amending the charge in writing, or by oral motion on the record. If the Board agent determines that amendment of the charge and complaint is appropriate, the Board agent shall permit an amendment. In determining the appropriateness of the amendment, the Board agent shall consider, among other factors, the possibility of prejudice to the respondent.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, **3513(h)**, 3514.5, **3515.7**, 3519, 3519.5, **3523**, **3541.3(i), (n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, **3563(h), (m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32649. Answer to Amendment.

Within 20 days or a time set by the Board agent after service of an amendment to the complaint, the Board agent may require the respondent to file an amendment to its answer, which shall respond only to the new allegations in the amended complaint. The respondent shall file with the Board proof of service of its amended answer.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32650. Informal Conference.

(a) A Board agent may conduct an informal conference or conferences to clarify the issues and explore the possibility of voluntary settlement. No record shall be made at such a conference.

(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32680. Formal Hearing.

If the informal conference procedure fails to result in voluntary settlement, the Board may order a hearing. The hearing shall be conducted by the Board according to the provisions of Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, **99566.3**, and **99569**, Public Utilities Code.

32690. Notice of Formal Hearing and Prehearing Memorandum.

(a) The Board shall serve on each party a notice of the formal hearing which shall state the date, time and place of the hearing.

(b) The Board may also serve on each party a pre-hearing memorandum which shall set forth the following information:

(1) A summary of the proceedings to date, including but not limited to a statement of the charge, a summary of any negotiations excluding offers of settlement and a statement of the issues settled;

(2) A statement of the issues to be decided at the formal hearing.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections **3502.5**, 3509, 3513(h), 3514.5, **3515.7**, 3519, 3519.5, **3523**, 3541.3(i), **(n)**, 3541.5, 3543.5, 3543.6, **3546.5**, **3547**, **3547.5**, 3563(h), **(m)**, 3563.2, 3571, 3571.1, 3571.3, **3584**, **3587**, **3595**, **71632.5**, 71639.1, **71814**, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, ~~and~~ 99563.8, **99566.3**, **and 99569**, Public Utilities Code.

32781. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board approval of a unit modification may file a petition in accordance with the provisions of this section.

(a) A recognized or certified employee organization may file with the regional office a petition for modification of its units:

(1) To add to the unit unrepresented classifications or positions;

(2) To divide an existing unit into two or more appropriate units;

(3) To consolidate two or more established units into one appropriate unit.

(b) A recognized or certified employee organization, an employer, or both jointly may file with the regional office a petition for unit modification:

(1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are management, supervisory, confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit;

(2) To make technical changes to clarify or update the unit description.

(3) To resolve a dispute as to unit placement or designation of a new classification or position.

(4) To delete classification(s) or position(s) not subject to (1) above which are not appropriate to the unit because said classification(s) or position(s) are management, supervisory,

confidential, not covered by TEERA, EERA, HEERA or Ralph C. Dills Act, or otherwise prohibited by statute from inclusion in the unit, provided that:

(A) The petition is filed jointly by the employer and the recognized or certified employee organization, or

(B) There is not in effect a lawful written agreement or memorandum of understanding, or

(C) The petition is filed during the "window period" of a lawful written agreement or memorandum of understanding as defined in these regulations in Section 33020 for EERA, Section 40130 for Ralph C. Dills Act, Section 51026 for HEERA, or Section 71026 for TEERA.

(c) All affected recognized or certified employee organizations may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be ~~filed in writing on forms provided by the Board.~~ It shall be signed by an authorized agent of each petitioning party **and shall include the following information:**

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current written agreement or memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more,** the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Section 32700 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

Authority cited: Sections 3513(h), 3541.3(e) and (g) and 3563(e) and (f), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3513(h), 3524, 3541.3(a) and (e), and 3563(a), Government Code, and Section 99561(a), (e), Public Utilities Code.

~~Article 8. Public Notice Complaints~~

~~32900. Public Notice.~~

~~EERA employers shall promulgate a local policy to implement Government Code sections 3547 and 3547.5 and HEERA employers shall promulgate a local policy to implement Government Code Section 3595. Each EERA employer shall publish and make available at each district office a copy of the policy.~~

Authority cited: Sections 3541.3(g), 3547(e), 3563(f) and 3595(e), Government Code.
Reference: Sections 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code.

~~32910. Filing of Complaint.~~

~~A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code sections 3523, 3547, 3547.5 or 3595, or Public Utilities Code section 99569, may be filed in the regional office. An EERA complaint may be filed by any individual who is a resident of the school district involved in the complaint or who is the parent or guardian of a student in the school district or is an adult student in the district. The complaint shall be filed no later than 30 days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered. Any period of time used by the complainant in first exhausting a complaint procedure adopted by an employer shall not be included in the 30-day limitation.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(e), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code.

~~32915. ——— Content of Complaint.~~

~~The complaint shall be filed with the regional office and shall include the following information:~~

- ~~(1) The name, address, and telephone number of the complainant, and, if the complaint is filed under EERA, whether the complainant is a parent in the school district, a parent or guardian of a student within the school district, or an adult student within the school district;~~
- ~~(2) The name, address, and telephone number of the employer covered by the complaint, and the name, address and telephone number of an authorized agent of the employer to be contacted;~~
- ~~(3) The name, address, and telephone number of the exclusive representative covered by the complaint, and the name, address and telephone number of an authorized agent of the exclusive representative to be contacted;~~
- ~~(4) The section(s) of the Government Code or the Public Utilities Code alleged to have been violated;~~
- ~~(5) The title or a description of the bargaining unit covered by the complaint;~~
- ~~(6) A statement identifying whether the complaint is filed against the employer or the exclusive representative;~~
- ~~(7) A clear and concise statement of the facts and conduct alleged to constitute an unfair practice; and~~
- ~~(8) A statement whether the employer has a procedure for resolving complaints and, if so, what efforts have been undertaken to resolve the complaint.~~

~~The complaint shall be signed by the complainant. Service and proof of service on the respondent pursuant to Section 32140 are required.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(c), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3(h), 3547, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code.

~~32920. ——— Processing of Complaint.~~

- ~~(a) When a complaint is filed, the case shall be assigned to a Board agent for processing.~~

~~(b) The powers and duties of such Board agent shall be to:~~

~~(1) Assist the complainant to state in proper form the information required by Section 32915, and send to the respondent a copy of the complaint.~~

~~(2) If the complaint fails to state a prima facie violation of Government Code section 3523, 3547, 3547.5 or 3595, or Public Utilities Code section 99569, the Board agent may issue a notice of deficiency to the complainant setting forth the basis for any amendment necessary to state a prima facie violation of Government Code section 3523, 3547, 3547.5 or 3595 or Public Utilities Code section 99569.~~

~~(3) Answer procedural questions regarding the processing of the case.~~

~~(4) Facilitate communication and the exchange of information between the complainant and the respondent or respondents.~~

~~(5) Explore the possibility of and facilitate the voluntary compliance and settlement of the case through informal conferences or other means.~~

~~(6) Conduct investigatory conferences with the parties to explore and resolve factual or legal issues.~~

~~(7) If the Board agent receives proof that the respondent has voluntarily complied with the provisions of Government Code sections 3523, 3547, 3547.5 or 3595, or Public Utilities Code section 99569, a Board agent may either approve the complainant's withdrawal of the complaint or dismiss the complaint.~~

~~(8) Dismiss any complaint which, after investigation, is determined to fail to state a prima facie allegation or which is not supported by sufficient facts to comprise a violation of Government Code sections 3523, 3547, 3547.5 or 3595, or Public Utilities Code section 99569. Any such dismissal is appealable to the Board itself pursuant to Section 32925 of these regulations.~~

~~(9) If the complaint is found by the Board agent to state a prima facie violation of Government Code sections 3523, 3547, 3547.5 or 3595, or Public Utilities Code section 99569, direct each respondent to file with the regional office a written answer, signed by an authorized agent of the respondent, which contains:~~

~~(A) The name of the complainant and the PERB case number appearing on the complaint;~~

~~(B) The name, address and telephone number of the respondent and the name, address and telephone number of the agent to be contacted;~~

~~(C) An admission or denial of each allegation contained in the complaint;~~

~~(D) A statement of any affirmative defense;~~

~~(E) A declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief;~~

~~(F) Proof of service of the answer on each other party pursuant to section 32140.~~

~~(10) Issue a written determination which includes a finding of a violation and which may order remedial action when, after investigation, it appears that such action is warranted, and that no material factual dispute exists. Any such determination is appealable to the Board itself pursuant to section 32925 of these regulations.~~

~~(11) Schedule a hearing pursuant to the hearing procedures described in Division 3, Chapter 1, Subchapter 3 commencing with section 32165 of these regulations when material factual disputes exist. Any hearing shall be limited to the issues set forth in the complaint. At the close of the hearing and subsequent to the hearing officer's declaration of the proposed findings of facts and conclusions of law, the hearing officer may solicit the aid of the parties in fashioning a mutually satisfactory remedy of any violations found.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(e), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Sections 99561(g) and 99569, Public Utilities Code.

~~32925. ——— Review of Determinations and Dismissals.~~

~~Within 20 days of the date of service of a dismissal made pursuant to section 32920(b)(8) or a determination made pursuant to section 32920(b)(10), any party adversely affected by the ruling may appeal to the Board itself. The appeal shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the appealing party or its agent. The appealing party shall serve the appeal and all supporting documents upon all other parties. Within 20 days of service, each other party may file with the Board itself an opposition to the appeal.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(e), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code.

~~32935. ——— Informal Conference.~~

~~The Board may conduct an informal conference to clarify the issues and explore settlement of the complaint.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(c), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3, 3547, 3563(g) and 3595, Government Code, and Sections 99561(g) and 99569, Public Utilities Code.

~~32940. ——— Withdrawal of Complaint.~~

~~The complainant may withdraw the complaint at any time prior to a final decision by the Board. The complainant shall file the withdrawal with the regional office. Service and proof of service of the withdrawal pursuant to Section 32140 are required.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(e), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3, 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code.

~~32950. ——— Filing Exceptions.~~

~~Either the complaining party or any respondent may file exceptions to the findings of fact and/or conclusions of law and/or recommended remedy with the Board itself in accordance with the procedures set forth in Division 3, Chapter 1, Subchapter 4 commencing with Section 32300 of these regulations.~~

Authority cited: Sections 3513(h), 3541.3(g), 3547(e), 3563(f) and 3595(e), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code.

32980. Compliance.

(a) The General Counsel is responsible for determining that parties have complied with final Board orders. The General Counsel or his/her designate may conduct an inquiry, informal conference, investigation, or hearing, as appropriate, concerning any compliance matter. The Board itself may, based on a recommendation of the General Counsel, authorize the General Counsel to seek court enforcement of a final Board order.

(b) If an administrative decision based on an investigation is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations.

(c) If a proposed decision based on a hearing is issued, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.

Authority cited: Sections 3509(a), 3513, 3541.3, 3563, 71639.1(b) and 71825(b), Government Code, and Section 99561(f), Public Utilities Code. Reference: Sections 3509, **3509.5**, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, and Sections 99561.3 and 99562, Public Utilities Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608.

33020. Window Period.

"Window period" means the 29-day period established pursuant to Government Code Sections 3544.1(c) and 3544.7(b)(1) which is less than 120 days, but more than 90 days, prior to the expiration date of a lawful written agreement negotiated by the public school employer and the

exclusive representative. The written agreement expiration date means the last effective date of the agreement. Notwithstanding the provisions of Section 32130, the date on which the written agreement expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Section 3541.3(g), Government Code. Reference: Sections 3544.1(c) and 3544.7(b)(1), Government Code.

40130. Window Period.

"Window period" means the 29-day period which is less than 242 days, but more than 212 days prior to the expiration date of a memorandum of understanding between the employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum of understanding. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Sections 3513(h) and 3541.3(g), Government Code. Reference: Sections 3520.5 and 3541.3(c), (l), Government Code.

51026. Window Period.

"Window period" means the 31-day period established pursuant to Government Code Sections 3574(c) and 3577(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the higher education employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Section 3563(f), Government Code. Reference: Sections 3574(c) and 3577(b)(1), Government Code.

**~~SUBCHAPTER 1. ENFORCEMENT AND APPLICATION OF LOCAL RULES
CONCERNING UNIT DETERMINATIONS, RECOGNITION, REPRESENTATION
AND ELECTIONS~~**

~~60000. ——— Petition for Board Review.~~

~~(a) Any party to a determination by a public agency concerning unit determination, representation, recognition or elections may file a petition requesting the Board review the determination. Such a petition may only be filed within 30 days following exhaustion of administrative remedies available under the applicable local rules. A challenge to the validity of a local rule may not be filed under this section and may only be filed as an unfair practice charge pursuant to Section 32602 of these regulations.~~

~~(b) The petition shall be filed with the regional office. Service and proof of service of the petition pursuant to Section 32140 are required.~~

~~(c) The petition shall contain the following information:~~

~~(1) The name, address, county and telephone number of the public agency and the name, address and telephone number of the public agency agent to be contacted;~~

~~(2) The name, address and telephone number of the petitioner and the name, address and telephone number of the petitioner's agent to be contacted;~~

~~(3) The name, address and telephone number of any other interested party and the name, address and telephone number of the party's agent to be contacted;~~

~~(4) A copy of any petition or request filed with the public agency, a copy of the final determination of the public agency, and any related materials;~~

~~(5) A statement of the issue(s) in dispute;~~

~~(6) A statement indicating the specific action(s) requested of the Board.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60010. ——— Board Investigation.~~

~~(a) Whenever a petition under Section 60000 is filed with the Board, the Board shall investigate and, where appropriate, conduct a hearing, or take such other action as deemed necessary to decide the questions raised by the petition.~~

~~(b) The petition shall be dismissed in part or in whole whenever the Board determines that:~~

~~(1) The petitioner has no standing to petition for the action requested; or~~

~~(2) The determination of the public agency was rendered in accordance with MMBA, the local rules of the public agency, and applicable precedent.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60020. Withdrawal of a Petition.~~

~~Any petition filed under Section 60000 may be withdrawn by the petitioner in writing at any time prior to a final decision by the Board. Service and proof of service of the withdrawal pursuant to Section 32140 are required.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60030. Informal Conference.~~

~~(a) A Board agent may conduct an informal conference to clarify the issues and explore settlement of the case. No record shall be made at such a conference.~~

~~(b) A Board agent shall give reasonable notice of such conference to each party directed to attend.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60035. Administrative Decision.~~

~~Any determination rendered without a hearing shall be issued in accordance with Section 32350 and may be appealed pursuant to Section 32360 of these Regulations.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60040. Notice of Hearing.~~

~~If the Board determines that a hearing is necessary, the Board shall serve a notice of hearing on each party. The notice shall state the date, time and place of the hearing.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60050. Conduct of Hearing; Issuance of Proposed Decision.~~

~~Hearings shall be conducted and proposed decisions shall be issued pursuant to procedures set forth in Chapter 1, Subchapter 3 of these Regulations.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~60070. Decisions of the Board Itself.~~

~~Procedures before the Board itself shall be in accordance with Chapter 1, Subchapter 4, Articles 1 through 4 of these Regulations.~~

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

~~SUBCHAPTER 2. REPRESENTATION PROCEEDINGS CONDUCTED BY THE PUBLIC EMPLOYMENT RELATIONS BOARD~~

Article 1. General Provisions

61000. Application of Regulations.

Except as otherwise ordered pursuant to Chapter 1, or as provided for by Public Utilities Code, Division 10, Part 16, Chapter 5 (section 105140 et seq.), the Board will conduct representation proceedings and/or agency fee rescission elections under MMBA in accordance with the applicable provisions of this ~~Subchapter~~ **Chapter** only where a public agency has not adopted local rules in accordance with MMBA section 3507, ~~a local agency has adopted such provisions as its local rules or where all parties to a representation case agree to be bound by the applicable PERB Regulations.~~

Authority cited: Section 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code, and Sections 105140, 105152 and 105153, Public Utilities Code.

61010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Section 3509(a) and 3541.3(g), Government Code. Reference: Sections 3507, 3507.1, 3509 and 3541.3, Government Code.

61080. Conduct of Elections; Eligibility to Appear on Ballot.

(a) If the Board determines that a Board-conducted election is necessary, the election shall be conducted in accordance with Article 2 of this ~~Subchapter~~ **Chapter**.

(b) Any employee organization which filed a valid petition or which became a party to a representation case may appear on the election ballot, provided that the organization has evidenced to the satisfaction of the Board at least 30 percent support in the appropriate unit. If an election is directed by a PERB decision, each eligible employee organization shall have 15 workdays from the date of service of the decision in which to demonstrate at least 30 percent support in the unit found to be appropriate by the Board.

(c) The Board shall determine the sufficiency of the proof of support in accordance with the provisions of Section 61020 of these Regulations.

Authority cited: Section 3509(a) and (c) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code.

61105. Ballot.

(a) All elections shall be conducted by secret ballot under the supervision of the Board.

(b) Ballots shall be prepared under the supervision of the Board. The order of voting choices and the wording of each ballot entry shall be determined by the Board absent an approved agreement of the parties.

(c) Except in the case of a runoff election, in which the ballot entries are determined pursuant to Section 61145, or an election conducted pursuant to either Article 4 or 7 of this ~~Subchapter~~ **Chapter**, the ballot entry of "No Representation" shall appear on each ballot in a representation election.

(d) At any time prior to issuance of the notice of election (pursuant to Section 61110), an employee organization may file a request with the regional office to have its name removed from the ballot. The request shall disclaim any interest in representing the employees in the described unit. Service and proof of service of the request pursuant to Section 32140 are required.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61185. Certification of Results of Election or Certification of Exclusive Representative.

Except in the case of elections conducted pursuant to either Article 4 or 7 of this ~~Subchapter~~ **Chapter**, the Board shall certify the results of the election or issue a certification of an exclusive representative if the results of the election are conclusive and no timely objections are filed.

Authority cited: Sections 3509(a) and 3541.3(g), Government Code. Reference: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code.

61400. Severance Petition.

(a) An employee organization may file a petition to become the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative by filing a petition for certification in accordance with the provisions of Article 3 of this ~~Subchapter~~ **Chapter**. Such a petition shall include the following information:

(1) The name, address and telephone number of the petitioning employee organization and the name, address and telephone number of the agent to be contacted;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title of the established unit;

(4) The name, address and telephone number of the exclusive representative of the established unit and the name, address and telephone number of the agent to be contacted;

(5) A description of the proposed appropriate unit, including the classifications and positions to be included and those to be excluded;

(6) The approximate number of employees in the proposed appropriate unit;

(7) The date on which the exclusive representative was recognized or certified;

(8) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit.

(b) Whenever a memorandum of understanding exists, a severance petition or an amendment to a severance petition must be filed during the "window period" defined by Section 61010.

(c) Concurrent with the filing of a severance petition and any amendment to a severance petition, the employee organization shall serve a copy of the petition or amendment, excluding any proof of support, on the employer and the exclusive representative. Proof of service pursuant to Section 32140 is required.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3507, 3507.1, 3509 and 3541.3(a), (c), (e) and (l), Government Code.

61450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit;
 - (2) To make technical changes to clarify or update the unit description;
 - (3) To resolve a dispute as to unit placement or designation of a new classification or position;
 - (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by MMBA or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:
 - (A) The petition is filed jointly by the employer and the exclusive representative, or
 - (B) There is not in effect a lawful written agreement or memorandum of understanding, or
 - (C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 61010.
- (c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.

(d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:

(1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;

(2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;

(3) A brief description and the title(s) of the established unit(s);

(4) The approximate number of employees in the established unit;

(5) The approximate number of employees covered by the petition;

(6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;

(7) A description of the modification(s) sought by the petition;

(8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;

(9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more**, the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Section 61020 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code.

61480. Disposition of Petitions.

- (a) Upon receipt of a petition for unit modification, the Board shall investigate and, where appropriate, conduct a hearing and/or a representation election, or take such other action as deemed necessary in order to decide the questions raised by the petition and to ensure full compliance with the provisions of the law.
- (b) The Board shall dismiss a petition if it is found to be improperly or not timely filed, or if proof of support submitted falls short of the required majority support, or if a representation election result has been certified within the 12 months immediately preceding the date of filing of the petition which covers any employees proposed to be added to the unit, or, ~~(3)~~ whenever the employer has, within the previous 12 months, lawfully recognized the exclusive representative in the described unit or a subdivision thereof.
- (c) Board Order of Unit Modification.
 - (1) The Board shall issue an order of unit modification whenever the disposition of a petition filed under this Article results in the modification of a unit.
 - (2) The order shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 61200.

Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code.

61620. Employee Vote.

- (a) Provided the rescission petition is timely and properly filed pursuant to this Article 2, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 61600, a rescission election among the employees in the established unit shall be conducted under procedures established by the Board and in accordance with election procedures described in these regulations.
- (b) The agency shop agreement or provision shall be rescinded if a majority of the employees in the negotiating unit covered by the provision vote to rescind the agreement.

Authority cited: Section 3509(a) and 3541.3(g) and (n), Government Code. Reference: Sections 3502.5(d), 3507, 3509 and 3541.3(c), Government Code.

71026. Window Period.

"Window period" means the 31-day period established pursuant to Public Utilities Code Sections 99564.1(c) and 99564.4(b)(1), which is not more than 120 days and not less than 90 days prior to the expiration date of a memorandum of understanding negotiated by the transit district employer and the exclusive representative. The memorandum of understanding expiration date means the last effective date of the memorandum. Notwithstanding the

provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Section 99561(f), Public Utilities Code. Reference: Sections 99564.1(c) and 99564.4(b)(1), Public Utilities Code.

81010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

81450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
- (2) To divide the existing unit into two or more appropriate units;
- (3) To consolidate two or more of its established units into one appropriate unit.

(b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:

- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not

covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit;

- (2) To make technical changes to clarify or update the unit description;
- (3) To resolve a dispute as to unit placement or designation of a new classification or position;
- (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Trial Court Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:
 - (A) The petition is filed jointly by the employer and the exclusive representative, or
 - (B) There is not in effect a lawful written agreement or memorandum of understanding, or
 - (C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 81010.
- (c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.
- (d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:
 - (1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;
 - (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
 - (3) A brief description and the title(s) of the established unit(s);
 - (4) The approximate number of employees in the established unit;
 - (5) The approximate number of employees covered by the petition;
 - (6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;
 - (7) A description of the modification(s) sought by the petition;
 - (8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;
 - (9) A statement of the reasons for the modification(s).

(e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more**, the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

(3) Proof of support is defined in Section 81020 of these regulations.

(f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

Authority cited: Sections 3541.3(g) and 71639.1(b), Government Code. Reference: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code.

91010. Window Period.

"Window period" means the 29-day period which is less than 120 days but more than 90 days prior to the expiration date of a lawful memorandum of understanding negotiated by the public agency and the exclusive representative. Expiration date means the last effective date of the memorandum. Notwithstanding the provisions of Section 32130, the date on which the memorandum of understanding expires shall not be counted for the purpose of computing the window period. ~~Whenever the last day of the window period falls on a Saturday, Sunday, or holiday, as defined in Government Code Sections 6700 and 6701, and state offices are closed, any petition required to be filed during a window period must be filed on or before the last PERB business day during the window period.~~

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71823 and 71825, Government Code.

91450. Petition.

Absent agreement of the parties to modify a unit, an exclusive representative, an employer, or both must file a petition for unit modification in accordance with this section. Parties who wish to obtain Board certification of a unit modification may file a petition in accordance with the provisions of this section.

(a) An exclusive representative may file with the regional office a petition for modification of its unit(s):

- (1) To add to the unit unrepresented classifications or positions;
 - (2) To divide the existing unit into two or more appropriate units;
 - (3) To consolidate two or more of its established units into one appropriate unit.
- (b) An exclusive representative, an employer, or both jointly may file with the regional office a petition for unit modification:
- (1) To delete classifications or positions which by virtue of change in circumstances are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit;
 - (2) To make technical changes to clarify or update the unit description;
 - (3) To resolve a dispute as to unit placement or designation of a new classification or position;
 - (4) To delete classifications or positions not subject to (1) above which are no longer appropriate to the established unit because said classification(s) or position(s) are not covered by the Court Interpreter Act or otherwise prohibited by statute or local rule from inclusion in the unit, provided that:
 - (A) The petition is filed jointly by the employer and the exclusive representative, or
 - (B) There is not in effect a lawful written agreement or memorandum of understanding, or
 - (C) The petition is filed during the "window period" of a lawful memorandum of understanding as defined in these regulations in Section 91010.
- (c) All affected exclusive representatives may jointly file with the regional office a petition to transfer classifications or positions from one represented established unit to another.
- (d) The petition shall be signed by an authorized agent of each petitioning party and include the following information:
- (1) The name, address and telephone number of the exclusive representative(s) of the unit(s) affected by the petition;
 - (2) The name, address and telephone number of the employer and the name, address and telephone number of the agent to be contacted;
 - (3) A brief description and the title(s) of the established unit(s);
 - (4) The approximate number of employees in the established unit;

- (5) The approximate number of employees covered by the petition;
 - (6) The effective and expiration dates of the current memorandum of understanding, if any, covering employees in the established unit;
 - (7) A description of the modification(s) sought by the petition;
 - (8) The name and address of any other employee organization known to have an interest in representing employees covered by the petition;
 - (9) A statement of the reasons for the modification(s).
- (e)(1) If the petition requests the addition of classifications or positions to an established unit, **and the proposed addition would increase the size of the established unit by ten percent or more**, the Board ~~may~~ **shall** require proof of majority support of persons employed in the classifications or positions to be added.
- (2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.**
- (3)** Proof of support is defined in Section 91020 of these regulations.
- (f) A copy of a petition filed solely by an exclusive representative or an employer shall be concurrently served on the other party, and on any additional interested party. Proof of service pursuant to Section 32140 is required. Proof of majority support, if required, shall be filed only with the regional office.

Authority cited: Sections 3541.3(g) and 71825(b), Government Code. Reference: Sections 3541.3, 71823 and 71825, Government Code.